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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. ~~[illegible]~~ 253

ARTHUR OPPENHEIMER, JR., *Appellant*

v.

UNITED STATES OF AMERICA, *Appellee*

On Appeal from the United States District Court for the Eastern District of Pennsylvania

STATEMENT AS TO JURISDICTION

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STATEMENT AS TO JURISDICTION

Appellant appeals from the Final Judgment of the United States District Court for the Eastern District of Pennsylvania, filed on March 14, 1957, in said cause, in a proceeding brought by the United States under Section 4 of the Sherman Act and submits this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial questions are presented.

OPINION BELOW.

The opinion of the District Court for the Eastern District of Pennsylvania is reported at 143 F. Supp. 184 and is reproduced as Appendix A to the statement of the appellant The Comfy Manufacturing Co. The Final Judgment is unreported and is printed as Appendix B. to The Comfy Manufacturing Co.'s statement.

JURISDICTION

This suit was brought by the Government under 15 U.S.C. Sec. 4 to enjoin an alleged conspiracy in unreasonable restraint of trade in the slip cover industry in violation of Section 1 of the Sherman Act (16 U.S.C. § 1), and an alleged conspiracy to monopolize the slip cover industry in violation of Section 2 of that Act (16 U.S.C. § 2). Judgment for the plaintiff was entered on March 14, 1957 and Notice of Appeal was filed on behalf of defendant Arthur Oppenheimer, Jr., in the U. S. District Court for the Eastern District of Pennsylvania on May 1, 1957. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 15 U.S. § 29. The following decisions sustain the jurisdiction of this Court to review such a judgment on direct appeal: *United States* v. *California Cooperative Canneries*, 279 U.S. 553; *United States* v. *Times-Picayune Publishing Co.*, 345 U.S. 594.

STATUTE INVOLVED

Sections 1, 2 and 4 of the Sherman Act, 16 U.S.C. §§ 1, 2, 4.

QUESTIONS PRESENTED

1. May a patentee who assigned his patent and, upon the assignee sub-licensing another, contributed a sum of money to expenses involving the protection of the patent against infringers and who agreed to the reduction of royalties payable to him, be held to have violated the antitrust laws?

2. May a patentee under the facts set forth in paragraph 1 above be held to have violated the antitrust laws without proof that he had knowledge of the acts of his assignee and the sublicensee?

STATEMENT OF THE CASE

The complaint charges the defendants as being engaged in a combination and conspiracy to violate the antitrust laws in the manufacture and sale of ready-made furniture slip covers.

Appellant Oppenheimer was the inventor of the subject matter of Patent No. 2,100,868 dated November 30, 1937 (expired November 30, 1954). Oppenheimer assigned his patent to The Comfy Manufacturing Co. and by an agreement dated October 25, 1937, he reserved a royalty to himself. Comfy sublicensed Sure-Fit Products Co. on October 4, 1938 as owner of the patent. Oppenheimer approved of the sublicense.

Oppenheimer, as assignor, was not in the slip cover business or in the employ of either Comfy or Sure-Fit. His interest lay entirely in collecting royalties on his patent.

On the Government's motion for Summary Judgment Oppenheimer was represented by counsel. The Court held that because he approved the Sure-Fit license, agreed to contribute a sum of money to the

protection of the patent and agreed to a reduction of the royalties, he was a party to the alleged conspiracy.

THE QUESTIONS PRESENTED BY THE APPELLANT ARE SUBSTANTIAL

1. The District Court decision of the case on Summary Judgment was an abuse of the right of the appellant which this Court should correct.

2. The Appellant Oppenheimer was not engaged in the slip cover business. He was employed by Bloomingdale Bros. in New York in its drapery department when he made the invention of his patent in 1935. He assigned his patent to The Comfy Manufacturing Co. and by an agreement dated October 25, 1937, was to receive royalties from Comfy on the basis of its sales. Comfy in turn licensed Sure-Fit on a royalty basis. The agreement with Sure-Fit was approved by Oppenheimer "in consideration of the potential benefits and advantages which said agreement represented to (him)".

Oppenheimer contributed a sum of money to the expenses of defending the patent against infringers and agreed to a reduction of the royalties as the business developed.

This is the substance of Oppenheimer's activities. He was not in the slip cover business nor in the employ of either Comfy or Sure-Fit. His activities were in other directions, such as being active in 1935 in the department store business. In 1941 he joined O.P.A. In April 1942 he enlisted in the Army. In November 1945 he bought a department store in Boise, Idaho.

It seems clear that Oppenheimer stood only in the position of an inventor interested in collecting royalties

on his patent. He had a right as such to contribute a sum of money to the protection of his patent and to revise the royalty rate on such terms as he judged to be reasonable.

There is no proof that Oppenheimer had knowledge of the alleged acts of Comfy and Sure-Fit. Such proof is required before he can be held to be a co-conspirator. *U. S.* v. *Falcone*, 311 U.S. 205, 210-211.

The decision below holding Oppenheimer to be a party to the conspiracy warrants review by this Court.

Respectfully submitted,

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